

1 KAREN P. HEWITT  
United States Attorney  
2 PETER J. MAZZA  
Assistant U.S. Attorney  
3 California State Bar No. 239918  
Federal Office Building  
4 880 Front Street, Room 6293  
San Diego, California 92101-8893  
5 Telephone: (619) 557-5528

6 Attorneys for Plaintiff  
United States of America  
7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Case No. 07CR3415-DMS  
11 )  
Plaintiff, ) DATE: September 25, 2008  
12 ) TIME: 9:30 a.m.  
v. )  
13 ) UNITED STATES' MOTIONS IN LIMINE  
MARGARITA HEREDIA-VARGAS (2), ) TO:  
14 MARTIN LOZANO-VARGAS (3), )  
15 ) (A) PROHIBIT REFERENCE TO  
Defendants. ) PUNISHMENT, ETC.;  
16 ) (B) LIMIT CHARACTER EVIDENCE;  
17 ) (C) PRECLUDE EVIDENCE OF  
DURESS AND NECESSITY;  
18 ) (D) ADMIT EXPERT TESTIMONY  
BY THE UNITED STATES;  
19 ) (E) RENEW ITS MOTION FOR  
RECIPROCAL DISCOVERY;  
20 )  
TOGETHER WITH STATEMENT OF FACTS,  
21 ) MEMORANDUM OF POINTS AND  
AUTHORITIES.  
22 )

23 COMES NOW, the plaintiff, the UNITED STATES OF AMERICA, by and  
24 through its counsel, KAREN P. HEWITT, United States Attorney, and  
25 Peter J. Mazza, Assistant United States Attorney, and hereby files its  
26 Motions in Limine. These motions are based upon the files and records  
27 of the case together with the attached statement of facts and  
28 memorandum of points and authorities.

**I****STATEMENT OF THE CASE**

On December 19, 2007, a grand jury sitting in the Southern District of California returned a one-count Indictment against Defendants Margarita Heredia-Vargas and Martin Lozano-Vargas (collectively "Defendants"), charging them with possession of 382.9 kilograms (842.4 pounds) of marijuana with the intent to distribute, in violation of 21 U.S.C. § 841(a)(1). On December 20, 2007, Defendants were arraigned on the Indictment.

On June 12, 2008, the Court held an evidentiary hearing regarding motions to suppress filed by Defendants. The Court denied the motion to suppress evidence resulting from the search, denied the motion to suppress the fruits of the search, denied the motion to suppress the statements made by Defendant Heredia-Vargas, and granted the motion to suppress the statements made by Defendant Lozano-Vargas.

On July 25, 2008, a grand jury returned a two-count Superseding Indictment charging Defendants with possession of marijuana with the intent to distribute, and aiding and abetting, in violation of 18 U.S.C. § 2, and conspiracy to distribute 100 kilograms and more of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846. On July 31, 2008, Defendant Lozano-Vargas was arraigned on the Superseding Indictment. On August 7, 2008, Defendant Heredia-Vargas was arraigned on the Superseding Indictment.

**II****STATEMENT OF FACTS****A. MIDWAY CAMPGROUND**

During the day on December 8, 2007, Border Patrol agents conducted routine surveillance duties at the Midway Campground, which

1 is in the area of the Imperial Sand Dunes. Border Patrol Agent Tyler  
2 Emblem observed activity at the Midway Campground that he felt was  
3 suspicious based on his training and experience. Specifically, Agent  
4 Emblem observed several individuals camping in the area of a rental  
5 motor home that had positioned their other vehicles in a "V" shape,  
6 which effectively blocked the view into their camping area. Agent  
7 Emblem also recognized one of the off-road vehicles parked in the area  
8 of this group as one that fit the description of a sand buggy that had  
9 previously been reported by citizens as a possible drug smuggling  
10 vehicle. At approximately 11:30 a.m., Drug Enforcement Administration  
11 (DEA) Task Force Officer (TFO) Craig Moore and Bureau of Land  
12 Management (BLM) Special Agent Clark Beene established stationary  
13 surveillance in the campground. They noticed that several individuals  
14 entered the camp and left shortly thereafter. They further noticed  
15 several members of the group going to the outhouse for extended  
16 periods of time. Agents conducted surveillance of the Defendants'  
17 campground from close range - approximately 30 yards - throughout the  
18 day.

19 At approximately 8:10 p.m., agents observed one of the all  
20 terrain vehicles (ATVs) associated with the group depart from the  
21 campground with its headlights off. The ATV left in a southerly  
22 direction toward the United States/Mexico international boundary that  
23 is approximately one mile south of the campground. At approximately  
24 8:20 p.m., agents observed an individual later identified as Defendant  
25 Trapero-Zazueta extinguish the campfire, while another individual  
26 later identified as Defendant Lozano-Vargas left the campground with  
27 his headlights off.

28 //

1 At approximately 8:30 p.m., Defendant Lozano-Vargas returned to  
2 the campground on an ATV with the headlights off. Shortly thereafter,  
3 agents utilizing night-vision equipment, observed several other  
4 individuals on ATVs driving from the south toward the campground  
5 without using the headlights on their vehicles. Agents observed that  
6 these ATVs also had large bundles attached to them. Based on these  
7 observations, and their individual training and experiences, agents  
8 suspected that the group to be conducting narcotics-related  
9 activities.

10 At the campground, Ranger Swanson observed the ATVs unload the  
11 bundles onto a flatbed trailer at the direction of Defendant Lozano-  
12 Vargas. After the bundles were loaded onto the flatbed trailer, the  
13 ATVs departed the campground with their headlights activated. Ranger  
14 Swanson then observed individuals later identified as Defendants  
15 Trapero-Zazueta, Lozano-Vargas, and Christian Maria Rodriguez  
16 transferring the bundles from the flatbed trailer to the area of the  
17 motor home. The flatbed trailer was hooked up to the motor home.  
18 During the transfer of the bundles, agents noticed Defendant Magana  
19 appear to be serving as a lookout for the group. He would alternate  
20 between watching over the transfer of the bundles and look out in the  
21 direction of other campgrounds. Once the bundles were removed from  
22 the trailer, Defendant Trapero-Zazueta relit the campfire.

23 At approximately 11:50 p.m., agents approached the area of the  
24 motor home. As they neared, they made contact with Defendant  
25 Rodriguez who was seated in the driver's seat of the motor home.  
26 Defendant Rodriguez exited the motor home and informed agents that  
27 there were more individuals still inside. Agents and officers  
28 instructed all remaining individuals to exit the motor home. Only

1 Defendants Trapero-Zazueta and Lozano-Vargas responded by exiting the  
2 motor home. Officers then called out a second time, and Defendant  
3 Magana exited. Officers called out a third time for remaining  
4 occupants to exit the motor home, and Defendant Heredia-Vargas finally  
5 emerged from the motor home. Fearing additional individuals may still  
6 be inside, officers conducted a protective sweep of the motor home.

7       Upon entering the motor home, agents encountered an overwhelming  
8 odor of a masking agent and marijuana. As agents proceeded to sweep  
9 the rear area of the motor home, they noticed in plain view, several  
10 large bundles in the shower area. Agents noticed in plain view  
11 several additional bundles stacked immediately next to the bed in the  
12 rear sleeping quarters. The bundles were approximately 2' x. 1.5'  
13 wide and approximately 10" deep. They were painted black, and wrapped  
14 in cellophane plastic and aluminum foil. Based on their training and  
15 experiences, officers and agents at the scene recognized these bundles  
16 to be consistent with those frequently used to conceal narcotics.

17       Once the agents exited the motor home, Defendant Rodriguez  
18 spontaneously stated that her mother had rented the motor home and she  
19 wanted to know "what was going on." Subsequent checks revealed the  
20 motor home was rented to Defendant Heredia-Vargas on December 7, 2007,  
21 in Indio, California. The five individuals were taken into custody.

22       A subsequent search of the vehicle revealed 47 bundles that  
23 contained approximately 382.08 kilograms (842.40 pounds). Field tests  
24 revealed that the bundles contained marijuana.

25 **B. POST-ARREST STATEMENTS BY DEFENDANT HEREDIA-VARGAS**

26       At approximately 12:37 a.m., Federal Bureau of Investigation  
27 Special Agent Ronald Ribail advised Defendant Heredia-Vargas of her  
28 Miranda rights as set forth on a standard Advice of Rights form used

1 by the FBI. Defendant Heredia-Vargas waived her Miranda rights and  
2 agreed to make a statement without an attorney present. Defendant  
3 Heredia-Vargas stated that she rented the motor home on December 7,  
4 2007 in Indio, California. She said her grandson, Defendant Lozano-  
5 Vargas, and his friend, "Adam," traveled with her to rent the vehicle.  
6 Defendant Vargas stated that they were being followed by an  
7 unidentified male driving a black truck. She stated that after  
8 renting the motor home, they drove it to Calexico, California where  
9 they met with two other unidentified males who helped her grandson  
10 hook up the flatbed trailer to the motor home. They then drove to the  
11 campground. She said that she slept on and off throughout the day on  
12 Saturday, December 8, 2007. She stated that when law enforcement  
13 arrived at their campground, she was sleeping on the couch near the  
14 door of the motor home. She stated that she had moved around the  
15 motor home for much of the day and night, and specifically mentioned  
16 that she used the bathroom at approximately 9:00 p.m. During her  
17 post-arrest interview, Defendant Heredia-Vargas acknowledged the  
18 presence of the bundles being off-loaded from the motor home, but  
19 denied knowing how they came to be located in the motor home.  
20 Defendant Heredia-Vargas denied observing any marijuana or other large  
21 packages in the motor home at any time. She noted that the motor home  
22 did not contain marijuana when she rented it on Friday, December 7,  
23 2007.

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## III

MOTIONS IN LIMINE**A. THE COURT SHOULD PROHIBIT REFERENCE TO DEFENDANT'S HEALTH, AGE, FINANCES, EDUCATION AND POTENTIAL PUNISHMENT**

Evidence of, and thus argument referring to, Defendants' health, age, finances, education and potential punishment is inadmissible and improper. "Evidence which is not relevant is not admissible." Fed. R. Evid. 402. Rule 403 provides further that even relevant evidence may be inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice." The Ninth Circuit Model Jury Instructions explicitly instruct jurors to "not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy." § 3.1 (2000 Edition). Reference to Defendants' health, age, finances, education and potential punishment may be relevant at sentencing. However, in a drug conspiracy trial, such reference is not only irrelevant and unfairly prejudicial, but an attempt for sympathy and jury nullification, as well.

Similarly, it is inappropriate for a jury to be informed of the consequences of their verdict. United States v. Frank, 956 F.2d 872, 879 (9th Cir. 1991). Any mention of penalty or felony status is irrelevant as it sheds no light on the Defendants' guilt or innocence. Therefore, the United States respectfully requests this Court to preclude any mention of possible punishment, age health, or finances of either defendant at any point in this trial.

**B. THE COURT SHOULD LIMIT CHARACTER EVIDENCE**

The United States anticipates that Defendants may attempt to introduce testimony regarding Defendants' specific acts of prior good conduct. This would be improper, and thus should be prohibited. Testimony as to multiple instances of good conduct violates Federal

1 Rule of Evidence 405(a). United States v. Barry, 841 F.2d 1400, 1403  
2 (9th Cir. 1987); Government of Virgin Islands v. Grant, 775 F.2d 508,  
3 512 (3d Cir. 1985).

4 Federal Rule of Evidence 404(a)(1) further states that evidence  
5 of a person's character is not admissible for the purpose of proving  
6 a person's actions on a particular occasion except "evidence of a  
7 pertinent trait of character offered by an accused or by the  
8 prosecution to rebut the same."

9 A character witness cannot offer specific instances of conduct  
10 by the defendant which would tend to support the reputation of the  
11 defendant. United States v. Giese, 597 F.2d 1170 (9th Cir. 1979)  
12 cert. denied, 444 U.S. 972 (1979) (character witnesses must restrict  
13 their direct testimony to appraisals of defendant's reputation);  
14 United States v. Hedgecorth, 873 F.2d 1307 (9th Cir. 1989) ("While a  
15 defendant may show a characteristic for lawfulness through opinion or  
16 reputation testimony, evidence of specific acts is generally  
17 inadmissible").

18 In interpreting the permissible scope of character evidence under  
19 Rule 404(a), the Ninth Circuit has ruled that presentation of  
20 witnesses to testify about a defendant's character for "law  
21 abidingness" and honesty is permissible. The appellate court,  
22 however, has held that asking a defense witness about the defendant's  
23 propensity to engage in a specific type of criminal activity is not  
24 allowed under Rule 404(a). See United States v. Diaz, 961 F.2d 1417  
25 (9th Cir. 1992) (impermissible to ask character witness about  
26 defendant's propensity to engage in large scale drug dealing).

27 Thus, the United States hereby moves in limine to prohibit  
28 Defendants from introducing testimony from any character witness about



1 (a) a specific instance of Defendant's conduct, and (b) Defendants'  
2 propensity to be involved in smuggling.

3 **C. THE COURT SHOULD PRECLUDE EVIDENCE OF DURESS AND NECESSITY**

4 A district court may preclude a necessity defense where "the  
5 evidence, as described in the defendant's offer of proof, is  
6 insufficient as a matter of law to support the proffered defense."  
7 United States v. Schoon, 971 F.2d 193, 195 (9th Cir. 1992).

8 In order to rely on a defense of duress, a defendant must  
9 establish a prima facie case that:

10 (1) Defendant committed the crime charged because of an  
11 immediate threat of death or serious bodily harm;

12 (2) Defendant had a well-grounded fear that the threat would be  
13 carried out; and

14 (3) There was no reasonable opportunity to escape the threatened  
15 harm.

16 United States v. Bailey, 444 U.S. 394, 410-11 (1980); United States  
17 v. Moreno, 102 F.3d 994, 997 (9th Cir. 1996), cert. denied, 118 S. Ct.  
18 86 (1997). If the defendant fails to make a threshold showing as to  
19 each and every element of the defense, defense counsel should not  
20 burden or confuse the jury with comments relating to such a defense.  
21 See, e.g., Bailey, 444 U.S. at 416.

22 A defendant must establish the existence of four elements to be  
23 entitled to a necessity defense:

24 (1) that s/he was faced with a choice of evils and chose the  
25 lesser evil;

26 (2) that s/he acted to prevent imminent harm;

27 (3) that s/he reasonably anticipated a causal relationship  
28 between his/her conduct and the harm to be avoided; and

1 (4) that there was no other legal alternatives to violating the  
2 law.

3 See Schoon, 971 F.2d at 195; United States v. Dorrell, 758 F.2d 427,  
4 430-31 (9th Cir. 1985). A court may preclude invocation of the  
5 defense if "proof is deficient with regard to any of the four  
6 elements." See Schoon, 971 F.2d at 195.

7 A pretrial motion is an appropriate means of testing the  
8 sufficiency of a proffered defense and precluding evidence thereof if  
9 the defense is found to be insufficient. Fed. R. Crim. P. 12(b) ("Any  
10 defense, objection, or request which is capable of determination  
11 without the trial of the general issue may be raised before trial by  
12 motion."); United States v. Peltier, 693 F.2d 96, 97-98 (9th Cir.  
13 1982) (per curiam); United States v. Shapiro, 669 F.2d 593, 596-97  
14 (9th Cir. 1982); see also Fed. R. Crim. P. 12(e). Courts have  
15 specifically approved the pretrial exclusion of evidence relating to  
16 a legally insufficient duress defense on numerous occasions. See  
17 United States v. Bailey, 444 U.S. 394 (1980) (addressing duress);  
18 Moreno, 102 F.3d at 997 (addressing duress).

19 The United States hereby moves for an evidentiary ruling  
20 precluding defense counsel from making any comments during the opening  
21 statement or during their cases-in-chief that relate to any purported  
22 defense of "duress" or "coercion" or "necessity" unless the Defendant  
23 makes a prima facie showing satisfying each element of the defense.  
24 The United States respectfully requests that the Court rule on this  
25 issue prior to opening statements to avoid the prejudice, confusion,  
26 and invitation for jury nullification that would result from such  
27 comments.

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1 **D. EXPERT TESTIMONY FOR THE UNITED STATES SHOULD BE ADMITTED**

2 **1. Introduction**

3 The United States moves this Court to admit expert testimony  
4 regarding the modus operandi/roles of drug organization members, the  
5 value of the controlled substance involved in this case, that 383  
6 kilograms of marijuana is an amount suitable for distribution, and  
7 that the substance seized was, in fact, marijuana. The United States  
8 intends to call a special agent with the United States Border Patrol  
9 as an expert in narcotics trafficking, and specifically in the  
10 Imperial Sand Dunes area of Imperial County. The United States  
11 intends to call an expert from the DEA to testify regarding the value  
12 of illicit narcotics, and distributable quantities of narcotics.  
13 Finally, absent a stipulation from Defendants, the United States will  
14 call a forensic chemist from the Drug Enforcement Administration as  
15 an expert in identifying the narcotic. The Court should admit such  
16 testimony as relevant and reliable.

17 **2. Standard of Admissibility**

18 If specialized knowledge will assist the trier-of-fact in  
19 understanding the evidence or determining a fact in issue, a qualified  
20 expert witness may provide opinion testimony on the issue in question.  
21 Fed. R. Evid. 702. The trial judge is the gatekeeper regarding the  
22 type and scope of expert testimony that should be admitted in any  
23 particular trial, and has "broad latitude" in determining the  
24 relevance and reliability of such testimony. Kumho Tire Co. v.  
25 Carmichael, 526 U.S. 137, 142 (1999).

26 Determining whether expert testimony would assist the  
27 trier-of-fact in understanding the facts in issue is within the sound  
28 discretion of the trial judge. United States v. Alonso, 48 F.3d 1536,

1 1539 (9th Cir. 1995); United States v. Lennick, 18 F.3d 814, 821 (9th  
2 Cir. 1994). The district court may consider the Daubert test or any  
3 other factors in addressing relevant reliability concerns regarding  
4 expert testimony. Kumho, 526 U.S. at 149-50 (noting that "there are  
5 many different kinds of experts, and many different kinds of  
6 expertise," including, "experts in drug terms, handwriting analysis,  
7 [and] criminal modus operandi, . . . ").

8 The expert's opinion may be based on hearsay or facts not in  
9 evidence when the facts or data relied upon are of the type reasonably  
10 relied upon by experts in the field. Fed. R. Evid. 703; see, e.g.,  
11 United States v. Gil, 58 F.3d 1414, 1422 (9th Cir. 1995) (stating  
12 "[w]e have consistently held that government agents or similar persons  
13 may testify as to the general practices of criminals to establish the  
14 defendants' modus operandi") (internal quotations omitted); see also  
15 United States v. Hankey, 203 F.3d 1160, 1168-70 (9th Cir. 2000)  
16 (affirming district court's admission of gang expert testimony that  
17 gang members would be subject to violent retribution if they testified  
18 against another gang member). An expert may provide opinion  
19 testimony even if the testimony embraces an ultimate issue to be  
20 decided by the trier-of-fact. Fed. R. Evid. 704; United States v.  
21 Plunk, 153 F.3d 1011, 1018 (9th Cir. 1998). An experienced narcotics  
22 agent may testify in the form of an opinion even if that opinion is  
23 based in part on information from other agents familiar with the  
24 issue. United States v. Golden, 532 F.2d 1244, 1248 (9th Cir. 1976).  
25 The proposed expert testimony "alerts [the jury] to the possibility  
26 that combinations of seemingly innocuous events may indicate criminal  
27 behavior." United States v. Johnson, 735 F.2d 1200, 1202 (9th Cir.  
28 1984).

1           **3.    Evidence Regarding Modus Operandi of Drug Couriers**

2           The United States moves to present expert testimony regarding the  
3   modus operandi of drug smuggling organizations and members, and  
4   particularly regarding the actions of those organizations and  
5   individuals that operate in the Imperial Sand Dunes area of Imperial  
6   County. Such testimony is proper to help the jury understand the  
7   evidence in the case, to put that evidence in a relevant context, and  
8   to ensure the jury does not decide the case in a vacuum. The evidence  
9   is relevant to the question whether Defendants knew of the packages  
10  in the vehicle, knew that the packages in the vehicle were drugs, and  
11  whether they knew that the purpose of the trip was to smuggle drugs.

12          The Ninth Circuit has consistently held that, in cases where a  
13  conspiracy has been charged, expert evidence regarding drug courier  
14  profile and "structure" evidence is admissible. United States v.  
15 Klimavicius-Viloria, 144 F.3d 1249, 1259-60 (9th Cir. 1998); United  
16 States v. Kearns, 61 F.3d 1422, 1427 (9th Cir. 1995); see also United  
17 States v. Vallejo, 237 F.3d 1008 (9th Cir. 2000), as amended 246 F.3d  
18 1150 (9th Cir. 2001) (holding that district court erred in admitting  
19 "structure" evidence where no conspiracy was charged and no showing  
20 was made by the United States linking the defendant to a larger drug  
21 organization); United States v. Pineda-Torres, 287 F.3d 860, 863 (9th  
22 Cir. 2002) (same).

23          Evidence about the drug-trafficking business, as well as  
24 admission of evidence about the modus operandi of drug couriers, is  
25 consistent with well-established law allowing expert testimony about  
26 a criminal organization's operations as relevant to a defendant's  
27 knowledge. See United States v. Alonso, 48 F.3d 1536, 1540 (9th Cir.  
28 1995) (holding that law-enforcement officers may testify regarding

1 "typical methods and techniques employed in an area of criminal  
2 activity," and explain how defendant's conduct conforms to typical  
3 methods) (quotation omitted); United States v. Gil, 58 F.3d 1414,  
4 1421-22 (9 th Cir. 1995) (admitting expert testimony regarding general  
5 practice of drug traffickers); United States v. Bosch, 951 F.2d 1546,  
6 1549-50 (9th Cir. 1991) (holding that agent with expertise in  
7 narcotics investigations may aid jury in understanding defendant's  
8 role in charged offense); United States v. Jaramillo-Suarez, 950 F.2d  
9 1378, 1384 (9th Cir. 1991) (holding that expert properly testified  
10 regarding drug organization's use of pay-owe sheets to keep track of  
11 customers); United States v. Guzman, 849 F.2d 447, 448 (9th Cir. 1988)  
12 (admitting expert agent's testimony that switching cars is common  
13 tactic used by narcotics traffickers); United States v. Patterson, 819  
14 F.2d 1495, 1507 (9th Cir. 1987) (permitting expert testimony that  
15 members of narcotics rings play many different roles, including street  
16 salesmen, money collectors, and lookouts); United States v. Stewart,  
17 770 F.2d 825, 831 (9th Cir. 1985) (allowing expert testimony that  
18 defendant engaged in counter-surveillance while driving on one  
19 occasion and was likely going to distribute drugs on another); United  
20 States v. Maher, 645 F.2d 780, 783 (9th Cir. 1981) (allowing expert  
21 testimony that a defendant's actions were consistent with the modus  
22 operandi of persons transporting drugs).

23       Given the case law above, this Court should allow expert  
24 testimony about the role and modus operandi of drug couriers. This  
25 Court should admit the requested evidence for the foregoing reasons  
26 and to avoid the risk that the jury may not understand how Defendant's  
27 arguably innocuous acts comport with drug smuggling.

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1           **4. Evidence Regarding Value of the Controlled Substance**

2           The United States moves for a narcotics expert to testify  
3 regarding the quantity of controlled substance found in the rental  
4 vehicle occupied by Defendants, and the street and wholesale value of  
5 the controlled substance both in the United States and in Mexico. The  
6 Ninth Circuit permits the use of such expert testimony.

7           In United States v. Ogbuehi, 18 F.3d 807, 812 (9th Cir. 1994),  
8 the defendant was charged with importation of heroin. At trial, the  
9 United States introduced expert testimony regarding the street value  
10 of the heroin, assuming the drugs had been repeatedly cut and sold on  
11 the street. The Ninth Circuit held that admission of such testimony  
12 was proper and that counsel can argue reasonable inferences from the  
13 evidence. Id. at 812; see also United States v. Savinovich, 845 F.2d  
14 834, 838 (9th Cir. 1988) (price, quantity and quality of narcotics is  
15 relevant to demonstrate defendant's knowledge of the drugs and intent  
16 to distribute them); United States v. Kearney, 560 F.2d 1358, 1369  
17 (9th Cir. 1977) (street value of narcotics relevant to demonstrate  
18 defendant's knowledge).

19           The testimony of the United States' expert regarding the quantity  
20 and value of the controlled substance seized is circumstantial  
21 evidence of Defendants' knowledge, intent, and participation in the  
22 drug smuggling venture. Knowledge and intent are essential elements  
23 of the offenses charged. The value testimony will tend to show that  
24 Defendants knowingly participated in the venture, and possessed the  
25 illegal drugs with the intention to further distribute them. Most  
26 important, such evidence will also help the jury understand the  
27 significance of the drugs' value, and the facts at issue in this case.  
28 Thus, the Court should admit the testimony.

1           **5.    383.08 Kilograms of Marijuana is an Amount for Distribution**

2           The United States intends to introduce expert testimony that  
3 383.08 kilograms of marijuana is an amount for distribution, not for  
4 personal use. Such evidence is relevant and admissible. Kinsey, 843  
5 F.2d 383, 387-88 (9 th Cir. 1988), overruled on other grounds, United  
6 States v. Nordby, 225 F.3d 1053 (9th Cir. 2000). The United States  
7 intends to offer the narcotics expert's testimony to show that  
8 Defendants intended to distribute the marijuana found in their  
9 vehicle. Such testimony is relevant to the issues of knowledge and  
10 intent to distribute; it is particularly significant to the jury's  
11 understanding of the facts of the case. Accordingly, the Court  
12 should allow such evidence to enable the United States to prove  
13 essential elements of the charged offenses.

14           **6.    Expert Testimony that the Substance Seized is Marijuana**

15           Absent a stipulation by Defendant, the United States intends to  
16 call a forensic chemist from the Drug Enforcement Administration to  
17 testify that the substance seized from Defendants' vehicle is  
18 marijuana, a Schedule I controlled substance. The United States  
19 anticipates that the forensic chemist will testify that the chemist  
20 performed various tests on the substance seized from the vehicle, and  
21 that these tests all indicated that the substance is, in fact,  
22 marijuana. This expert will base this opinion on the chemist's  
23 background, education and experience, along with the chemist's  
24 knowledge and use of accepted scientific methods of testing. This  
25 testimony bears directly on an element of the charged offense -- that  
26 marijuana is a prohibited drug.

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1 **E. UNITED STATES RENEWED MOTION FOR RECIPROCAL DISCOVERY**

2 As of the date of the preparation of these motions, Defendant has  
3 produced no reciprocal discovery including photographs Defendant  
4 intends to introduce at trial. The United States requests that  
5 Defendant comply with Rule 16(b) of the Federal Rules of Criminal  
6 Procedure, as well as Rule 26.2 which requires the production of prior  
7 statements of all witnesses, except for those of Defendant. Defendant  
8 has not provided the United States with any documents, photographs,  
9 or statements.

10 **IV**

11 **CONCLUSION**

12 For the above stated reasons, the United States respectfully  
13 requests that its Motions in Limine be granted.

14 DATED: September 11, 2008.

15 Respectfully Submitted,

16 KAREN P. HEWITT  
17 United States Attorney

18 s/ Peter J. Mazza  
19 PETER J. MAZZA  
20 Assistant U.S. Attorney  
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